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EXAMINER

PIERCE, JEREMY R

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 07/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/634,381

Applicant(s)

HOOD ET AL.

Examiner

Jeremy R. Pierce

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 16-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Applicant's Amendment has been filed on June 27, 2003. Claim 6 has been amended. The amendment is sufficient to overcome the 35 USC 112 rejection set forth in the section 3 of the last Office Action.

Claim Rejections - 35 USC § 102

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-3, 5, 7-12, 14, and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Cejka et al. (U.S. Patent No. 6,106,922).

Cejka et al. disclose a material having first and second layers of polymer material where the first layer protrudes into the second layer forming stems (column 2, lines 3-9). Projecting elements extend from the base layer with terminal parts that comprise a second distinct polymer layer (Figures 2 and 3). With regard to claims 2, 3, 11, and 12, Cejka et al. disclose the polymers can contain different color pigments (column 9, lines 36-40). With regard to claim 5, Cejka et al. disclose many of the same polymers (column 3, line 58 –column 4, line 5). With regard to claim 7, Cejka et al. also disclose using fillers (column 6, lines 18-20). With regard to claim 8, Cejka et al. disclose using polyethylene (column 5, line 59). With regard to claim 9, Cejka et al. disclose the base layer may have an active surface for providing an adhesive or coating (column 4, lines

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14-16). Such adhesive would comprise a slip-resistant sheet. With regard to claim 10, Cejka et al. disclose that in another embodiment, one of the layers is discontinuous, and would thus have open spaces (column 2, line 10). With regard to claim 14, Cejka et al. disclose using conductive fillers (column 6, line 25).

4. Claims 1, 2, 5, 7, 8, 12, 13, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Rawlinson (U.S. Patent No. 4,329,196).

Rawlinson discloses a three-dimensional laminate that comprises a substrate layer and a three-dimensional layer (Abstract). The three-dimensional layer can be made of a material that is chemically different than the substrate layer (column 3, lines 1-3), so the terminal parts of the projecting elements would comprise a distinct polymer from the substrate layer. With regard to claims 2, 7, and 12, both layers may contain pigments (column 3, line 14). With regard to claims 5, 8, and 13, Rawlinson discloses a number of different available polymers (column 2, lines 45-51), including low density polyethylene (column 3, lines 9-10).

5. Claims 1, 6, 9, 10, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Zuiddam et al. (U.S. Patent No. 4,866,808).

Zuiddam et al. disclose floor mat comprising a plurality of U-shaped plastic profiles (Abstract). The terminal parts that differ from the base section in Zuiddam et al. would be the bristles that come out of the center of the U-shaped projections (Figure 1). With regard to claim 6, the projecting elements have bristles as the core and the U-shaped plastic at its surface. With regard to claim 9, a slip-resistant sheet is provided (column 4, lines 20-24). With regard to claim 10, there are open surfaces (Figure 2).

Claim Rejections - 35 USC § 103

6. Claims 4 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cejka et al.

With regard to claim 4, Cejka et al. do not disclose that some of the terminal parts would be a different color than the substrate and some of the terminal parts would be the same color as the substrate. However, Cejka et al. do disclose embodiments wherein the different pigments (column 9, lines 36-40) are used and similar pigments are used in the different polymers (column 14, lines 28-41). It would have been obvious to one having ordinary skill in the art to provide some, but not all terminal parts with different pigments than the substrate layer in order to provide a substrate with a varying pattern and different aesthetics. With regard to claim 13, Cejka et al. do not disclose polyethylene with a density between 0.915 and 0.92. However, Cejka et al. disclose using low linear density polyethylene, such as Attane (column 11, line 22) and Exact (column 16, line 31). These trademark polyethylenes can have varying densities, including those in Applicant's claimed range. It would have been obvious to one having ordinary skill in the art to use a polyethylene with a density between 0.915 and 0.92, since Cejka et al. disclose using low density polyethylene, and it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416.

7. Claims 3, 4, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rawlinson.

Rawlinson does not disclose differentially pigmenting the two polymers. It would have been obvious to one having ordinary skill in the art to add different pigment to the two layers in order to provide a substrate with different aesthetics. Similar motivation exists for having only some, but not all terminal parts of the projecting elements a different color.

Response to Arguments

8. Applicant's arguments filed on June 27, 2003 have been fully considered but they are not persuasive.

9. Applicant argues that Cejka et al. do not teach that the web of material is prepared from a unitary article comprising two distinct first and second polymeric material, as provided by way of Applicant's invention. However, Cejka et al. disclose that the first and second material differ from one another (column 2, lines 5-8).

10. Applicant argues that Rawlinson does not teach a unitary molded, polymeric article with projecting elements, wherein said molded article is prepared from distinct first polymeric materials and second polymeric materials as provided by Applicant's invention. However, Rawlinson teaches the two layers can be similar materials (column 3, lines 1-3), which indicates that the two layers may be different if desired.

11. Applicant argues that Zuiddam et al. do not teach a unitary molded, polymeric article with projecting elements, wherein said molded article is prepared from distinct first polymeric materials and second polymeric materials as provided by Applicant's

invention. However, Zuiddam et al. provide projecting elements made from plastic profiles with bristle-like filaments (column 3, lines 8-33).

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy R. Pierce whose telephone number is (703) 605-4243. The examiner can normally be reached on Monday-Thursday 7-4:30 and alternate Fridays 7-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

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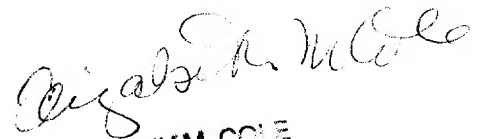
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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Jeremy R. Pierce
Examiner
Art Unit 1771

July 28, 2003



ELIZABETH M. COLE
PRIMARY EXAMINER